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PROPOSALS ON THE ORGANIZATION OF THE COURT

Working paper submitted by Japan

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Article 9

Chambers

1. As soon as possible after each election of judges to the Court, the Presidency shall in accordance with the Rules constitute an Appeals Chamber consisting of seven judges, of whom at least three shall be judges elected from among the persons nominated as having the qualification referred to in article 6 (1) (b).

2. [as drafted by ILC]

3. [as drafted by ILC]

4. Judges not members of the Appeals Chamber shall be available to serve on Trial Chambers and Pre-trial Chambers required by this Statute, and to act as substitute members of the Appeals Chamber in the event that a member of that Chamber is unavailable or disqualified.

5. The Presidency shall nominate in accordance with the Rules three such judges to be members of the Pre-trial Chamber for a given case. A Pre-trial Chamber shall include at least two judges elected from among the persons nominated as having the qualification referred to in article 6 (1) (a). A Pre-trial Chamber shall be responsible in the given case for such functions as prescribed in [articles 26 (3) and (5), 27 (2) to (4), 27 (5) (b), 28 (1) to (3), 30 (3), and any other functions concerning pre-trial process].

6. The Presidency shall nominate in accordance with the Rules five such judges who are not members of the Pre-trial Chamber for a given case to be members of the Trial Chamber for the same case. A Trial Chamber shall include at least three judges elected from among the persons nominated as having the qualification referred to in article 6 (1) (a).

7. The Rules may provide for alternate judges to be nominated to attend a trial and to act as members of the Pre-trial Chamber and Trial Chamber in the event that a judge dies or becomes unavailable during the course of the trial.

8. [as drafted by ILC as original para. 7]

Article 11

Excusing and disqualification of judges

1. [as drafted by ILC]

2. In the following cases a judge shall be excluded from the exercise of his functions under this Statute:

(a) If he himself is the injured party;

(b) If he is or was a relative of the accused or the injured party;

(c) If he is a national of a complainant State or of a State of which the accused is a national;

(d) If he is the legal representative, supervisor of the guardian or curator of the accused or the injured party;

(e) If he has acted as a witness or an expert witness in the case involving the accused or the injured party;

(f) If he has acted as the representative, counsel or assistant of the accused in the case involving that accused;

(g) If he has exercised the functions of a public prosecutor or a judicial officer in the case involving the accused;

(h) If he has previously exercised the functions of a judge in the case involving the accused at the national level; or

(i) If he has participated in the decision mentioned in article 8 or 37 (4), in the decision by the court below, in the original judgement of the case which has been sent back in accordance with the provisions of article 50 or in the investigations which form the basis of such decisions.

3. [as drafted by ILC]

4. [as drafted by ILC]

5. Procedures of the trial subsequent to the change of the judges in accordance with this article shall be prescribed by the Rules.

Article 12

The Procuracy

[1 to 4 and 7 - as drafted by ILC]

5. The Prosecutor and Deputy Prosecutors shall not act in relation to a complaint falling in the following cases:

(a) If they themselves are the injured party;

(b) If they are or were a relative of the accused or the injured party;

(c) If they are a national of a complainant State or of a State of which the accused is a national;

(d) If they are the legal representative, supervisor of the guardian or curator of the accused or the injured party;

(e) If they have acted as a witness or an expert witness in the case involving the accused or the injured party; or

(f) If they have acted as the representative, counsel or assistant of the accused in the case involving that accused.

6. In case the Prosecutor or a Deputy Prosecutor falls in the cases prescribed in the preceding paragraph, he may be challenged by the accused. The Presidency shall decide on challenges against the Prosecutor or a Deputy Prosecutor made before the first day of the public trial. Challenges made afterwards shall be decided by the Trial Chamber concerned.

Article 15

Discipline and loss of office

1. A judge, the Prosecutor or a Deputy Prosecutor shall not be removed against his will except by procedures in this article unless judicially declared mentally or physically incompetent to perform official duties.

2. A judge can be removed by a two-thirds majority of the States Parties upon request by either more than three judges or more than one tenth of the States Parties, if that judge falls in either of the following cases:

(a) If he/she has committed grave misconduct in performing his/her functions, or a serious breach of his/her official duties; or

(b) If he/she has been engaged in delinquency, whether officially or privately, which raises serious doubts in public confidence in his/her capacity as a judge.

3. A judge who has committed misconduct other than those mentioned in the preceding paragraph shall be subject to such disciplinary measures as decided by a two-thirds majority of the judges excluding himself/herself.

4. The Prosecutor or a Deputy Prosecutor can be removed by a majority of the States Parties upon request by either the Presidency or more than one tenth of the States Parties, if he/she falls in either of the following cases:

(a) If he/she has committed grave misconduct in performing his/her functions, or a serious breach of his/her official duties; or

(b) If he/she has been engaged in delinquency, whether officially or privately, which raises serious doubts in public confidence in his/her official capacity.

5. The Prosecutor or a Deputy Prosecutor who has committed misconduct other than those mentioned in the preceding paragraph shall be subject to such disciplinary measures as decided by _____.

6. Discipline including loss of office against other staff of the Court shall be governed by the Rules and the Staff Regulations.

7. [as drafted by ILC as original para. 3]

Article X

Compensation

1. The Court shall make compensation to those who were:

(a) Pronounced innocent by an irrevocable adjudication;

(b) Arrested or detained for the purpose of prosecution, although the prosecution against him did not eventually take place;

(c) Arrested or detained but the lawfulness of that arrest or detention was denied in accordance with this Statute; or

(d) Illegally inflicted losses upon by an officer of the Court intentionally or negligently in the course of performing its duties.

2. Procedures and criteria for compensation shall be provided in the Rules, including the expenses to be borne by a complainant State if that State lodged a complaint without sufficient reason.